

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Acceleration of Broadband Deployment |) | WC Docket No. 11-59 |
| Expanding the Reach and Reducing the Cost of |) | |
| Broadband Deployment by Improving Policies |) | |
| Regarding Public Rights of Way and Wireless |) | |
| Facilities Siting |) | |

**COMMENTS OF
CITY OF HOPKINSVILLE, KENTUCKY**

The City of Hopkinsville, Kentucky (hereafter, Hopkinsville) by and through its legal counsel, files these comments in response to the Notice of Inquiry ("NOI"), released April 7, 2011, in the above-entitled proceeding. Through these comments, Hopkinsville seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges. The Commission should not interfere with these local policies. Hopkinsville has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy.

In response to the NOI, the City of Hopkinsville, Kentucky, provides the following information:

I. Application Procedures, Forms, Substantive Requirements, and Charges.

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.¹ These items are readily available on the City's website and/or from City Departments.

II. Sources of delays.

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.²

In Hopkinsville, most applications are processed very quickly. In most cases, if the applicant provides all the needed materials for the issuance of a permit, the permit is issued within one day. However, in very large projects that require the review of engineering plans, this can take up to one week. Most telecommunications and cable permits are able to be issued within one day. A major factor in the delay of the issuance of a permit is that the applicant does not supply all the information or materials needed to issue a permit. Also, Hopkinsville and surrounding areas have unique geologic conditions that may cause delays.

III. Improvements.

The Commission asks whether there are particular practices that can improve processing.³

Hopkinsville has employees that can go out in the field to meet with a franchisee if an unforeseen condition or problem occurs while working with a permit. Having personnel available prevents delays in returning rights-of-way to service. Hopkinsville has attempted

¹ NOI ¶14.

² *Id.*

³ NOI ¶¶ 14, 29.

“single dig” or joint trenching processes, but has found that the majority of the issues are between the franchisees, rather than between a franchisee and the City.

Additionally, the City usually deals with a franchisee or contractor, and then a subcontractor does the actual work in the rights-of-way. Often a subcontractor will try to save money by not specifically following the policies and then the City requires the subcontractor to redo the work in accordance local regulations.

IV. Permitting Charges.

The Commission seeks data "on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees."

Specifically, the Commission asks commenters to identify:

- the type of facilities for which such charges are assessed;
- how such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees);
- whether the community is subject to comprehensive state franchising or rights-of way-laws;
- whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.⁴

In Hopkinsville, a permit is required for a lane closure, sidewalk, parking on meters, or any work in the rights-of-way. Plan Review and Permit Fees range from \$50.00 to \$200.00 per permit. All fees are posted on-line. Most fees are collected up front when a permit is applied for, but some franchisees are billed monthly for permits. No fees are individually

⁴ NOI ¶ 17.

negotiated. Fees are set as an attempt to cover actual costs for the permitting process.

Hopkinsville's regulatory scheme does not address the location of facilities on City owned property other than in the rights-of-way. Any collocation of utility equipment on City owned property, other than the rights-of-way, is individually negotiated, as are all leases for City owned property.

Hopkinsville does not require any in-kind contributions required for access or permit approval. It only requires that permitted rights-of-way be put back into the same condition as they were prior to the permitted work, and in accordance with federal, state, and local laws.

Kentucky does not have state franchising laws other than a constitutional provision which requires that franchises be competitively bid, may not be for longer than 20 years, and may not be exclusive.⁵

V. Local Policy Objectives.

The Commission asks what "policy goals and other objectives" underlie the local practices and charges in this area.⁶

In Hopkinsville, our policies are designed to achieve the following:

- facilitate the responsible deployment of services;
- make all public services, including broadband telecommunications broadly-available;
- ensure public safety;
- avoid traffic disruption;

⁵ Kentucky Constitution Section 164 provides: No county, city, town, taxing district or other municipality shall be authorized or permitted to grant any franchise or privilege, or make any contract in reference thereto, for a term exceeding twenty years. Before granting such franchise or privilege for a term of years, such municipality shall first, after due advertisement, receive bids therefor publicly, and award the same to the highest and best bidder; but it shall have the right to reject any or all bids. This section shall not apply to a trunk railway.

⁶ NOI ¶ 22.

- maintain and repair roadways;
- prevent public disruption and damage to abutting property;
- minimize accelerated deterioration to roads that accompanies street cuts;
- satisfy aesthetic, environmental, historic preservation concerns; and
- to avoid damage to the property of others;

VI. Possible Commission Actions.

Finally, the Commission asks what actions the Commission might take in this area.⁷

As noted above, Hopkinsville strongly urges the FCC to refrain from regulating local rights-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, create confusion with other franchisees using the rights-of-way, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services.

VII. Conclusion

The City of Hopkinsville, Kentucky would like to thank the Commission for its efforts to better understand the practices and policies surrounding local governments' management of the public rights of way. We strongly urge the Commission to consider our comments, as well as those submitted by communities across the country, before

⁷ NOI ¶ 36.

taking any action that may adversely affect local governments' rights of way authority.
The Commission must resist moving forward in any other contexts to act on any of the
issues raised in the NOI until the record in this proceeding is complete.

Respectfully submitted,

The City of Hopkinsville, Kentucky

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